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Title:

Book Review. Rebecca J. Cook and Simone Cusack, Gender Stereotyping: Transnational Legal Perspectives

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Rebecca J. Cook and Simone Cusack, ***Gender Stereotyping: Transnational Legal Perspectives***
(University of Pennsylvania Press, Philadelphia, 2010, 288 pp, £32.50) ISBN 978-0-8122-4214-0 (hb)

Gender stereotypes are everywhere. Often without our knowledge, they play a huge role in our daily lives. Whether it concerns personal appearance, career, or romantic involvement; all of these areas are infused with gender stereotypes. Cook and Cusack understand a stereotype as 'a generalized view or preconception of attributes or characteristics possessed by, or the roles that should be performed by, members of a particular group' (p. 9). It is part of human nature to stereotype, because we need mechanisms to process and make understandable the complex world around us. However, and this is when it becomes problematic, the 'key consideration' is that this entails that an individual, simply by virtue of membership of a group, is believed to conform to a generalized view, regardless of her actual abilities and situation (pp 9-11). The challenge for jurists is to identify the problematic stereotypes and translate them, in an appropriate manner, into law.

The thesis of this book holds an invitation: Cook and Cusack argue that 'in order to eliminate all forms of discrimination against women, and indeed to eliminate other violations of women's rights whether or not they constitute a form of discrimination, greater priority and thought need to be given to the elimination of wrongful stereotyping' (pp 2-3). The authors encourage us to think through the issue of gender stereotyping: what are gender stereotypes, wherein lies their harm, and what could be the role of law in eradicating them. It is evident that the authors do not intend this book to be an exhaustive treatment of legal perspectives on gender stereotyping, but more the start of a transnational debate and a consciousness-raising effort.

The book forms part of a discussion on gender stereotypes that has been going on at least since the 1970s. This discussion has received a new impetus by a recent surge of scholarship on gender stereotypes and the law.¹ However, to date, the bulk of the literature has concentrated on gender stereotyping in the context of the United States' equal protection regime. Cook and Cusack widen the debate in a timely manner. They do a good job of sampling decisions from various jurisdictions (though admittedly with an English-language bias). Their book is proof of what the former Justice of the Supreme Court of Canada, L'Heureux-Dubé, predicted:

[W]e will all benefit enormously from a greater awareness of international and comparative equality jurisprudence because decisions from around the world may provide a much-needed external perspective on the myths and stereotypes that may continue to permeate the values and laws of our own communities and cultures.²

Cook and Cusack take the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW') as their primary framework for analysis, since Article 5(a) CEDAW contains an anti-stereotyping obligation.³ This approach has advantages as well as disadvantages. Its chief

¹ Franklin, 'The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law', (2010) 85 *New York University Law Review* (forthcoming); Siegel and Siegel, 'Struck By Stereotype: Ruth Bader Ginsburg on Pregnancy Discrimination as Sex Discrimination', (2010) 59 *Duke Law Journal* 771; Suk, 'Are Gender Stereotypes Bad For Women? Rethinking Antidiscrimination Law and Work-Family Conflict', (2010) 110 *Columbia Law Review* 1.

² The Honourable Madame Justice Claire L'Heureux-Dubé, 'Beyond the Myths: Equality, Impartiality, and Justice', (2001) 10 *Journal of Social Distress and the Homeless* 87, 101.

³ Article 5(a) CEDAW obligates States to 'modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'.

advantage lies in the fact that the discussion of gender stereotypes ties into a legal framework that is already in place and to which 186 states have pledged their allegiance. Article 5 CEDAW is not just a declaration of intent; it is a binding legal norm. The disadvantage is that this approach creates ambiguity, as the authors do not explore in a sustained manner what states have done to implement Article 5(a) CEDAW, nor how judges around the world have interpreted this article. It is therefore not clear to what extent the focus is actually on that article.

Even though this is not made explicit, the book in fact has two fairly distinctive parts. The first two chapters concern gender stereotypes generally, while the following chapters focus on CEDAW. The first part of the book – including the chapters ‘Understanding Gender Stereotyping’ and ‘Naming Gender Stereotyping’ – is very dense. The authors employ a sophisticated understanding of stereotypes, drawing on insights from psychology in order to appreciate what stereotypes are and why we use them. They emphasize that we first need to name a stereotype, identify its form, and expose its harm, in order to make it recognizable and thereby legally cognizable. In this context the authors aptly use the metaphor of diagnosing a disease before a treatment can be applied (pp 3, 175).

Cook and Cusack distinguish four types of gender stereotypes: (1) sex stereotypes, which concern physical and biological differences between men and women; (2) sexual stereotypes, which focus on the sexual interaction between humans; (3) sex-role stereotypes, concerning normative views regarding appropriate behavior for men and women; and (4) compounded stereotypes, referring to gender stereotypes that intersect with other types of stereotype. To my knowledge, this categorization is new. Especially in the area of compounded stereotypes a lot of work remains to be done, both by state and non-state actors. In the European human rights context, think for example of stereotypes of Roma and Muslim women, stereotypes of LGBT persons, and the class dimensions of gender stereotypes.

The chapters that focus on CEDAW contain some repetition of the first two chapters, but are interesting, especially in view of the paucity of scholarship on the (potential) role of CEDAW in eliminating gender stereotypes. This lack of scholarship is surprising considering the fact that the Women’s Committee itself has affirmed the central importance of addressing gender stereotypes in order to eliminate all forms of discrimination against women.⁴ First, there is a chapter on ‘State Obligations to Eliminate Gender Stereotyping’. In this context, the authors adhere to the well-known tripartite framework (the obligations to respect, to protect, and to fulfill). Next is ‘Gender Stereotyping as a Form of Discrimination’. Building on the definition of discrimination that is formulated in Article 1 CEDAW, this is the chapter where the authors pose many of the hard questions: When is the application or perpetuation of a gender stereotype justified? What degree of harm warrants legal protection? The last full chapter, ‘The Role of the Women’s Committee in Eliminating Gender Stereotyping’, contains an overview of the Committee’s mandate and proposes suggestions as to how it can strengthen its position on gender stereotyping.

Cook and Cusack have sought to advance a legal methodology that takes gender stereotyping as its focal point, thereby advancing real equality for women. This is what they call ‘transformative’ equality as it addresses the systemic and structural inequality of women (pp 6, 8). Reading their book, though, it becomes clear just how complicated is this project. In the first place, designing legal remedies for invidious stereotypes is difficult, because stereotypes often operate at a subconscious

⁴ CEDAW Committee, General Recommendation 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, A/59/38 (2004) at paras 6-7.

level. Social science literature is replete with evidence of this.⁵ Second, stereotypes often serve a legitimate social function; how do we determine which stereotypes are legitimate and which stereotypes should be actionable by law? What degree of harm warrants legal protection? And third, assuming there is not a monolithic view on what kinds of stereotypes exist, how do we settle the question whether a certain view is stereotypical? How do we take culture into account?

This book is to be applauded for raising these difficult issues, even though it obviously cannot provide answers to all of them. Nevertheless, Cook and Cusack do not raise all the issues that could be discussed within this framework. For example, what is the difference between stigma and stereotype? Is it that stigma always carries with it a negative connotation while stereotypes do not necessarily do so? But in that case, can we use the two terms interchangeably in so far as stereotypes have a negative meaning? And what about prejudice? It would also have been instructive if the authors had elaborated on the harm of stereotyping. Part of what makes this book so attractive is that the reader feels, intuitively almost, that the authors have hit on the central problem concerning the inequality between men and women, namely the persistence of gender stereotypes. On a profound level the authors have got it right: stereotypes significantly impact individuals' ability to shape their own identities. '[S]tereotypes infringe unduly on the capacity of individuals to construct and make decisions about their own life plans' (p. 11). But more examples from real life (perhaps in the form of a narrative) would have been useful to illustrate the concrete harm of stereotypes.

Still, this book unquestionably forms the most thorough investigation of international legal perspectives on gender stereotyping to date. It is an essential contribution to the debate on stereotypes and the law. The authors deserve the highest praise for applying a transnational lens, thus actually acting on the knowledge that has existed for some time now; that stereotyping is part of human nature everywhere. Cook and Cusack's invitation to join them in rethinking gender stereotypes will prove irresistible.

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⁵ For an accessible overview of this scholarship, see e.g. Stangor (ed.), *Stereotypes and Prejudice: Essential Readings* (Philadelphia: Taylor & Francis, 2000).